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19 Attorneys for Plaintiff and Counter Defendant  
20 ViaSat, Inc.

21 **UNITED STATES DISTRICT COURT**  
22 **SOUTHERN DISTRICT OF CALIFORNIA**

23 **ViaSat, Inc.,** ) Case No.: 3:16-cv-00463-BEN-JMA  
24 *a Delaware corporation,* )  
25 ) Declaration of Kenneth M.  
26 Plaintiff ) Fitzgerald In Support Of Plaintiff  
27 and Counter Defendant, ) ViaSat, Inc.'s Motion for Partial  
28 v. ) Summary Judgment  
Acacia Communications, Inc., )  
*a Delaware corporation,* ) Date: March 5, 2018  
Defendant ) Time: 10:30 a.m.  
and Counter Claimant, ) Place: Courtroom 5A  
Dist. Judge: Hon. Roger T. Benitez  
Hon. Magistrate Jan M. Adler  
Case Initiated: January 21, 2016

1 I, Kenneth M. Fitzgerald, declare as follows:

2 1. I am an attorney at Fitzgerald Knaier LLP, counsel for plaintiff and  
3 counter defendant ViaSat, Inc. I am licensed to practice law in the State of  
4 California and admitted to this Court. I have personal knowledge of the facts set  
5 forth in this declaration, to which I could and would testify competently if called  
6 upon to do so.

7 2. Attached hereto as Exhibit 1 is a demonstrative exhibit, showing  
8 comparisons of pages from ViaSat's Low Level Technical Specifications from the  
9 Everest project, and various versions of Acacia's Low Level Technical Specifications  
10 for products on which it has not paid royalties. The ViaSat specifications and the  
11 versions of the Acacia specifications from which this demonstrative exhibit was  
12 prepared are attached as Exhibits 4 through 8. All of the Acacia specification  
13 documents were produced in discovery by Acacia, as indicated by the Acacia Bates  
14 numbers beginning with "ACI." Where these documents were marked as deposition  
15 exhibits, the deposition exhibit numbers appear in the lower right hand corner of the  
16 first page of each specification.

17 3. Attached hereto as Exhibit 2 is a list of personnel from Acacia and  
18 ViaSat whose emails, documents, and testimony are relied on in support of this  
19 motion, with descriptions of their respective titles and roles. These titles and roles  
20 are described in their deposition testimony, in the excerpts cited in Exhibit 2 and  
21 included in Exhibits 9 through 18.

22 4. Attached hereto as Exhibit 3 is a chronologically ordered list of Acacia  
23 products, with the approximate dates when each was developed, with citations to the  
24 deposition testimony of Acacia witnesses where such approximate dates were  
25 described. In addition, this demonstrative exhibit includes an indication of whether  
26 each product is an Accused Product, that is a product on which Acacia has not paid  
27 royalties.

28 5. Exhibits 1 through 3 are provided as basic reference guides, and are

1 intended to aid the Court in its review of this motion.

2       6. Attached hereto as Exhibits 9 through 18 are true and correct excerpts  
3 from the deposition transcripts of the following witnesses, with the relevant  
4 testimony marked in brackets:

- 5           • 9 – Mehmet Aydinlik, Ph.D.
- 6           • 10 – Pierre Humblet, Ph.D.
- 7           • 11 – Gary Martin, Ph.D. (30(b)(6) designee of Acacia)
- 8           • 12 – Benny Mikkelsen, Ph.D.
- 9           • 13 – Peter Monsen
- 10          • 14 – Larry Pellach
- 11          • 15 – Graeme Pendock, Ph.D.
- 12          • 16 – Christian Rasmussen, Ph.D.
- 13          • 17 – Bhupen Shah (30(b)(6) designee of Acacia)
- 14          • 18 – Alexander Vardy, Ph.D.

15       7. Attached hereto as Exhibits 19-21 are true and correct copies of  
16 correspondence between ViaSat's Associate General Counsel Erik Bliss and Acacia's  
17 Vice President Bhupen Shah and General Counsel Janene Asgeirsson.

18       8. Attached hereto as Exhibit 22 is a true and correct copy of Deposition  
19 Exhibit 501, the License Agreement at issue in this action.

20       9. Attached hereto as Exhibit 23 is a true and correct copy of Deposition  
21 Exhibit 85, the Non-Disclosure Agreement between the parties to this action.

22       10. Attached hereto as Exhibit 24 is a true and correct copy of relevant  
23 excerpts from the opening expert report of ViaSat's retained technical expert  
24 Krishna Narayanan, Ph.D.

25       11. Attached hereto as Exhibit 25 is a true and correct copy of relevant  
26 excerpts from the opening expert report of Acacia's retained technical expert  
27 Alexander Vardy, Ph.D.

28       12. Attached hereto as Exhibit 26 is ViaSat's Amended Trade Secret

Identification, which we served on Acacia's counsel in this case.

2       13. Attached as Exhibits 27 through 58 are true and correct highlighted  
3 copies of documents produced in discovery by counsel for Acacia. The documents  
4 all bear the Bates numbers used by Acacia to designate its documents, beginning  
5 with the prefix “ACI,”, and all were marked by Acacia as “Highly Confidential –  
6 Attorneys’ Eyes Only” under the terms of the Stipulated Protective Order in this  
7 action. Many of these documents were marked and used as deposition exhibits in  
8 the depositions of Acacia’s witnesses. Where the exhibits were used as deposition  
9 exhibits, the deposition exhibit numbers are reflected in the numbered exhibit stamp  
10 on the first page of each exhibit, and indicated in the Index of Exhibits  
11 accompanying this motion. We have highlighted certain language from these  
12 exhibits where that language is relevant to the assertions in our motion.

13        14. Attached hereto as Exhibit 59 is a true and correct copy of an investor  
14 presentation produced by Acacia's venture capital investor Matrix Partners, in  
15 response to a subpoena we served on that firm.

16 I declare under penalty of perjury under the laws of the United States of  
17 America that the foregoing is true and correct. Executed this 2nd day of February  
18 2018 in San Diego, California.

s/ Kenneth M. Fitzgerald

Kenneth M. Fitzgerald

1                   **CERTIFICATE OF SERVICE**

2                   I certify that today I am causing to be served the foregoing document by  
3 CM/ECF notice of electronic filing upon the parties and counsel registered as  
4 CM/ECF Users. I further certify that am causing the foregoing document to be  
5 served by electronic means via email upon counsel for Acacia Communications, Inc.,  
6 per the agreement of counsel.

7 Dated: February 2, 2018

*s/ Kenneth M. Fitzgerald*

8                   Kenneth M. Fitzgerald, Esq.  
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